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CONTRACTS - REWARDS -APPORTIONMENT AMONG CLAIMANTS ACTING SEVERALLY

CONTRACTS — REWARDS — APPORTIONMENT AMONG CLAIMANTS ACTING SEVERALLY—When a reward has been offered for the apprehension of a criminal, arrest is frequently effected by the combined ef-

forts of persons acting independently of each other. Action among the captors is necessarily independent when apprehension depends upon the contribution of bits of information in the possession of persons who are scattered over a wide area and who have no acquaintance with each other. Furthermore, in the nature of things information is apt to be scattered because a criminal attempting to cover his escape will leave only a few tell-tale clues along the path of his flight. When arrest has been accomplished through the efforts of persons acting severally, the question arises as to what basis such persons have for claiming a reward offered for the apprehension of a fugitive?

There seems to be no dispute that the rules of contract are applicable to the settlement of controversies over rewards; [1] it is rather the application of these rules which causes difficulty. In terms of contract classification, the offer of a promise to pay a reward for the apprehension of a criminal, or for the return of lost or stolen property, is an offer for an act, or more properly a series of acts. A unilateral contract results from the acceptance of such an offer. The proposition is not open to question that an offeror is free to incorporate such terms and conditions in his offer as he wishes; nor would it be contended that acceptance results from action short of substantial performance of all the conditions contained in the offer.[2]

A determination of precisely what terms and conditions can reasonably be said to have been incorporated in a particular offer of reward is especially difficult because of the short cryptic form which the offer usually takes. The offeror in the normal case merely advertises that he will pay a sum of money for the apprehension of the person or persons who perpetrated a certain crime. An English judge once expressed the opinion that a bare advertisement of reward was too indefinite to result in a contract.[3] Such a broad condemnation appears never to have obtained in a decision. Interpretation is aided by the principle that offers of reward are to be construed liberally and in accordance with prac-

[1] "The matter rests exclusively in the domain of contract, involving an offer and its acceptance." M'Claughry v. King, (C. C. A. 8th, 1906) 147 F. 463 at 464; Arkansas Bankers Assn. v. Ligon, 174 Ark. 234, 295 S. W. 4 (1927); 1 WILLISTON, CONTRACTS, § 74 (1927).

[2] "Arrest" or "arrest and conviction" are the conditions commonly imposed by offers of reward, but the service usually contemplated is causing arrest by furnishing information. Haskell v. Davidson, 91 Me. 488, 40 A. 330 (1898); cases are collected in 8 Ann. Cas. 860 (1908), and in Ann. Cas. 1915B 667 (1915). When the offer requests two acts, acceptance requires the performance of both. Hogan v. Stophlet, 179 Ill. 150, 53 N. E. 604 (1899); Chambers v. Ogle, 117 Ark. 242, 174 S. W. 532 (1915); Blain v. Pacific Express Co., 69 Tex. 74, 6 S. W. 679 (1887). Statutes sometimes prescribe the form which offers of rewards by political subdivisions shall take; for cases construing such statutes, see 86 A. L. R. 579 (1933).

[3] Judge Maule, in Thatcher v. England, 3 C. B. 254, 136 Eng. Rep. 102 (1846).

tical understanding.[4] Perhaps this principle is no more than an embellishment of the rule of reasonable construction applicable to contracts in general, but such a form of expression has the virtue of emphasizing the spirit in which rewards are advertised and the attitude in which they are accepted.

In piecing out the contractual essentials of offer and acceptance from the facts of advertisement of reward for arrest followed by apprehension, the matter of identity of the parties is presented. The name of the offeror invariably appears in the advertisement, so with the identity of the promisor there is no problem. There is more difficulty, however, in ascertaining the promisor's intention in regard to possible promisees. A reward advertisement is an offer to the public or to the world at large.[5] While offerors may restrict the category of persons capable of accepting under the terms of the offer, the form and circumstances of advertising rewards import the converse of restriction. The offeror is predominantly interested in the achievement of a result, and he is peculiarly indifferent as to who produces this result. Furthermore, the uncertain identity of those who are capable of performing or those who are likely to perform requires that the offer be stated in unrestricted terms. Having adopted advertisement as a means of attaining breadth in the scope of his offer, it is fair to assume that the promisor contemplates that a single person, a group of persons acting together by prearrangement, or (which is more likely under the circumstances) several persons acting independently of each other will accept. The desired result of apprehension is achieved in either case. Hence it is that those who together perform the requested acts may properly be said to be offerees, regardless of their prior relationship to each other.

The offerees being a group of persons acting severally, some reference should be made to the nature of their rights against the offeror. Whether these rights be joint or several depends upon the apparent intention of the offeror. The factors applicable to this determination, when there is no evidence of that intention, are generally said to be the interest of the promisees, the form in which the consideration was furnished, and the language of the offer.[6] Although the acts of the claimants, which serve as consideration for the offeror's promise, by hypothe-

[4] Marsh v. Wells Fargo & Co., 88 Kan. 538, 129 P. 168 (1913), followed in Hall v. State, 102 Wash. 519, 173 P. 429 (1918); Umatilla County v. Estes, 105 Ore. 248, 208 P. 761 (1922).

[5] Although policy excludes police officers from accepting rewards in their line of duty, Union Pacific Ry. v. Belek, (D. C. Neb. 1913) 211 F. 699, permitted participants other than officers to share the reward, stressing the fact that the question arose on bill of interpleader.

[6] International Hotel Co. v. Flynn, 23 Ill. 636, 87 N. W. 855 (1909); Atlanta Ry. v. Thomas, 60 Fla. 412, 53 So. 510 (1910); Anderson v. Nichols, 93 Vt. 262, 107 A. 116 (1919); 1 CONTRACTS RESTATEMENT, § 128 (1932).

sis are furnished severally, the controlling feature would seem to be the nature of the transaction. The offeror undoubtedly contemplated a promise to an individutl or to a group of individuals jointly, in the latter case each member of the group being entitled to his proportionate share. In view of the nature of the transaction, it seems fair to assume that, however many accepted, the reasonable expectation of the offeror was that there would be but a single settlement in which all claimants would join. A construction of the promise as joint is therefore required to give effect to such an expectation.[7] It follows that the promise is to the offerees as a group, that their rights are joint, and that all must join in suit. The court, however, will apportion the reward among claimants acting severally, according to the relative value of their respective services.[8]

Absent any question of identity of the parties or question of non-joinder in an action by claimants who have acted independently of each other, the contention is still apt to be made that no one person or unit, composed of members acting jointly or in concert, has substantially performed all of the conditions of the offer. The fallacy of this argument is believed to lie in the requirement that the group accepting the offer must have acted jointly in a partnership sense.[9] In view of the circumstances described in which offers of reward are made, there would seem to be no basis for importing such a requirement. The purpose of the offer is more readily achieved without the requirement, for induce-

[7] Lockhart v. Barnard, 14 M. & W. 674, 153 Eng. Rep. 646 (1845), dismissing for non-joinder; 1 WILLISTON, CONTRACTS, § 326 (1927), incidents of joint rights.

[8] Umatilla County v. Estes, 105 Ore. 248, 208 P. 761 (1922); in Bloomfield v. Maloney, 176 Mich. 548 at 561, 142 N. W. 785 (1913), the court stated that there was no arbitrary rule for the division of a reward; Maggi v. Cassiday, 190 Iowa 933 at 939, 181 N. W. 27 (1921): "We cannot say or determine to whom the greater credit belongs, but we can say that together they have accomplished the thing for which the reward was promised. The situation thus presented is one in which 'equality is equity' . . . "; Genesee County v. Philthorpe, 246 Mich. 356, 224 N. W. 418 (1929). If the case arose at law instead of in the usual manner in equity on a bill of interpleader or its statutory substitute, the form of judgment might require payment to the group as a whole, precluding apportionment among the claimants severally.

The further question arises as to the power of one joint obligee to discharge the obligor. 1 WILLISTON, CONTRACTS, § 343 (1927), says that the obligation can be so discharged, but suggests that if the discharge was intended and known as a fraud on the other obligees that the obligor could not use the release as a defense. For agency among obligees to settle, see Wallace v. Kalsall, 7 M. & W. 264, 151 Eng. Rep. 765 (1840); Osborn v. Martha's Vineyard Ry., 140 Mass. 549, 5 N. E. 486 (1886). But see Hart v. Green, 16 Colo. App. 70, 65 P. 344 (1901), where the mere fact that two or more persons were acting together in making an arrest did not make them partners so as to authorize one to make an agreement with a stranger concerning the division of the reward binding on the others.

[9] Instances of concert among the claimants are Umatilla County v. Estes, 105 Ore. 248, 208 P. 761 (1922); Union Pacific Ry. v. Belek, (D. C. Neb. 1913) 211 F. 699; Janvrin v. Town of Exeter, 48 N. H. 83 (1868).

ment to disclose is then held out to an isolated individual with a single clue. Moreover, construing the condition to be fulfilled by the independent action of several claimants does not relax the necessity that the combined efforts of the group amount to substantial compliance with the terms of the offer.[10] There may be instances in which the claimants may rely upon the offeror's waiver of substantial performance, but such is not necessary where the group has performed in full.[11]

While some courts granting apportionment of the reward have required joint action in the sense in which individuals enter upon a joint adventure—prearranged concert [12]—other courts have not recognized such an element to be essential to the enforcement of contractual liability.[13] In a unilateral contract, merely because the offeror's promise is joint, the conclusion does not follow that the action required of the promisees must likewise be joint. The promisees' action is but a distinct condition upon which the promisor incurs obligation to perform.

[10] By its nature the usual offer for arrest and conviction is for an entire contract. The offeror having competently made his offer in this form, on the principle of substantial performance claimants would not be entitled to the reward where one of their number performed an essential part of the offer without knowledge thereof. [53 A. L. R. 542 (1928) states that knowledge of the offer is essential to acceptance in a majority of jurisdictions.] Some offers of rewards result in divisible contracts, as offers for the return of lost or stolen money. The consideration is apportionable. Symmes v. Frazier, 6 Mass. 344 (1810); Hawk v. Marion County, 48 Iowa 472 (1878). But an offer for the capture of two criminals was held not divisible in Blain v. Pacific Express Co., 69 Tex. 74, 6 S. W. 679 (1887).

[11] If the offeror expressly waived substantial performance, failure to so perform would not constitute a defense. Since disputes over rewards frequently arise on a bill of interpleader, the question is presented as to what admission is involved in filing the bill. In Kinn v. First National Bank, 118 Wis. 537, 95 N. W. 969 (1903), the court said that the offeror admitted that the culprit had been arrested by some of the claimants. In Maggi v. Cassiday, 190 Iowa 933, 181 N. W. 27 (1921), it was said that the offeror having paid the money into court had no right to have it returned. Each claimant, however, must establish his own right. Conway v. Caswell, 121 Ga. 254, 48 S. E. 956 (1904).

[12] In Elkhorn Valley Lodge v. Hudson, 59 Neb. 672, 81 N. W. 859 (1900), several persons were engaged in searching for a dead body. Denying apportionment and giving the entire reward to the person coming upon the body, the court said at 674: "It must further appear that efforts put forth were in conjunction with the party who succeeded in the search, and with whom there was co-operation for that purpose; that such persons were acting in concert, and by their joint efforts the desired end was accomplished. . . . " Stair v. Heska Amone Congregation, 128 Tenn. 190, 159 S. W. 840 (1913); Stroud v. Garrison, 24 Ark. 53 (1862); Hall v. State, 102 Wash. 519, 173 P. 429 (1918).

[13] In Union County v. Hopkins, 95 N. J. Eq. 444 at 461, 123 A. 365 (1924), the court said:

> "In other words, it must be proved that the contract was in fact completed according to the terms of the offer, whether by the single or several or joint action of one or more persons, and that if more than one person participated in the performance, all who did so participate must be parties in the suit, since the contract is entire, and though entire performance might be by the totality of the acts of

The only joint aspect which may fairly be said to be involved in the action of the promisees is joint causation of apprehension as the term is used in tort cases of negligence. The condition to the accrual of the offeror's obligation being the causation of arrest, all those whose efforts contribute to causing the arrest are entitled to share in the reward. Obviously two persons may jointly cause injury to a third party without agreement to act together. In the recent case of *Omaha Printing Co. v. Mack* [14] the court used the term joint action in the causation sense. There was no evidence of prearranged concert, but the court analysed the causal chain of events leading to arrest, labeled the action joint, and apportioned the reward among the several claimants who had acted independently.

It is submitted that a construction of an offer of reward which requires merely that the efforts of the claimants contribute to causing the arrest is in accord with the reasonable intentions of the offeror and with the surrounding facts. Besides encouraging disclosures by individual claimants, such an interpretation satisfies an equity of the claimants acting in reliance on the offer which has often been recognized by the courts.[15] Finally, this construction provides a basis in the rules of contract for apportioning rewards among claimants acting independently of each other.

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several acting independently, no one of them alone could sue for or recover a part of the reward. Payment can be earned only as a whole and awarded only as a whole; although when so awarded distribution might be made severally."
Goldsborough v. Cradie, 28 Md. 477 (1867); Fargo v. Arthur, 43 How. Prac. (N. Y.) 193 (1872); United States v. Card, (D. C. Me. 1881) Fed. Cas. No. 14,720a; Whitcher v. State, 68 N. H. 605, 34 A. 745 (1895); Kinn v. First Nat. Bank, 118 Wis. 537, 95 N. W. 969 (1903); Forsythe v. Murnane, 113 Minn. 181, 129 N. W. 134 (1911); Tobin v. McComb, (Tex. Civ. App. 1913) 156 S. W. 237; Elkins v. Board of Commissioners, 91 Kan. 518, 138 P. 578 (1914), rehearing denied, 92 Kan. 299, 140 P. 896 (1914); Benton v. Kentucky Bankers' Assn., 211 Ky. 554, 277 S. W. 858 (1925); Genesee County v. Pailthorpe, 246 Mich. 356, 224 N. W. 418 (1929).

[14] (Neb. 1936) 264 N. W. 673.

[15] Rea v. Smith, 2 Handy (Ohio, Cinn. Super. Ct.) 193 (1856); Tomlinson v. Phoenix, 8 Ky. Opin. 547 (1875); Cotton v. Downs, 168 Ark. 736, 271 S. W. 340 (1925).